MONTANA LEGISLATIVE HISTORY

Chapter 360 19 75

Bill H _____ S 120 Original bill & history ✓ C

H. Committee on Judiciary		S. Committee on Judiciary	
Hearing Date(s) 3-17-75	C	Hearing Date(s) 1-24-75	C
_____	C	_____	C
_____	C	_____	C
_____	C	_____	C
Date Out _____	C		

Did this bill originate in an interim committee? ____ Yes ✓ No

Committee _____ Report _____

INTRODUCED BY Senate BILL NO. 120
Robert Cetrone

A BILL FOR AN ACT ENTITLED: "AN ACT TO AMEND SECTION 94-6-204, R.C.M. 1947, DEFINING THE CRIME OF BURGLARY BY ADDING THE TERM 'UNLAWFULLY' TO THE DEFINITION OF AGGRAVATED BURGLARY."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 94-6-204, R.C.M. 1947, is amended to read as follows:

"94-6-204. Burglary. (1) A person commits the offense of burglary if he knowingly enters or remains unlawfully in an occupied structure with the purpose to commit an offense therein.

(2) A person commits the offense of aggravated burglary if he knowingly enters or remains unlawfully in an occupied structure with the purpose to commit a felony therein, and

(a) in effecting entry or in the course of committing the offense or in immediate flight thereafter, he or another participant in the offense is armed with explosives or a weapon; or

(b) in effecting entry or in the course of committing the offense, or in immediate flight thereafter he purposely, knowingly, or negligently inflicts or attempts to inflict bodily injury upon anyone.

(3) A person convicted of the offense of burglary shall be imprisoned in the state prison for any term not to exceed ten (10) years. A person convicted of the offense of aggravated burglary shall be imprisoned in the state prison for any term not to exceed forty (40) years."

-End-

INTRODUCED BILL

SB 120

MINUTES OF THE MEETING
JUDICIARY COMMITTEE
JANUARY 24, 1975

he meeting was called to order by Senator Towe, Chairman, at :36 a.m. in Room 442 of the Capitol Building.

he following bills were heard: SB 80
SB 120
SB 121
SB 122
SB 123
SB 124

B 80 Senator Flynn, from District 48 and sponsor of the bill, introduced Robert Deschamps, Missoula County Attorney, who drafted the bill.

Mr. Deschamps stated this bill is patterned after statutes in thirteen states with primary work being done in liaison with the King County, Seattle, Washington, County Attorney's office. He said the bill provides for an investigative subpoena and also selective immunity based on testimony given. He gave two examples of cases where this bill would have aided greatly in investigation and prosecution of white collar crime.

B 120 Senator Roberts, from District 11 and sponsor of the bill,

office. He said the bill provides for an investigative subpoena and also selective immunity based on testimony given. He gave two examples of cases where this bill would have aided greatly in investigation and prosecution of white collar crime.

SB 120 Senator Roberts, from District 11 and sponsor of the bill,
121 stated this package of bills was drawn up to correct some
122 oversights in the 1973 Criminal Code which could have
123 some negative results in interpretation and/or appeals.
124

Professor Larry M. Elison, University of Montana Law School presented testimony on the bills. His written statement is attached.

The hearing was closed and the Committee went into Executive Session.

SB 120 SENATOR TURNAGE MOVED SB 120 DO PASS. THE MOTION CARRIED UNANIMOUSLY ON A ROLL CALL VOTE.

SB 121 SENATOR TURNAGE MOVED CONSIDERATION OF SB 121 BE PASSED FOR THE DAY FOR THE PURPOSE OF FURTHER DISCUSSION. THE MOTION CARRIED.

SB 122 SENATOR TURNAGE MOVED SB 122 DO PASS. THE MOTION CARRIED UNANIMOUSLY ON A ROLL CALL VOTE.

SB BILL NO. 120

INTRODUCED BY _____

94-6-204

A BILL FOR AN ACT ENTITLED: A BILL TO AMEND SECTION 94-6-204 DEFINING THE CRIME OF BURGLARY BY ADDING THE TERM 'UNLAWFULLY' TO THE DEFINITION OF AGGRAVATED BURGLARY."

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EXPLANATION

This amendment is intended to make the use of the term "enter or remain unlawfully" consistent throughout the burglary statute.

"Enter or remain unlawfully" is given a special definition for the purposes of the crimes of criminal trespass and burglary only (see section 94-6-201).

There has been some controversy, both in Montana and elsewhere, over the kind of entry required to constitute the crime of burglary. Some laws require an actual forcible breaking in. Others allow a burglary charge even for a lawful entry if the offender intends to commit a crime on the premises entered. Montana's Supreme Court ruled many years ago that a burglarious entry did not have to be forcible but must be unlawful. A person entering an open store, for instance, would not be a burglar even if he entered with intent to shoplift. If he did steal something he could be prosecuted for theft but not for burglary.

The new burglary statute, Section 94-6-204, was intended to

for instance, [illegible]

tent to shoplift. If he did steal something he could be prosecuted for theft but not for burglary.

The new burglary statute, Section 94-6-204, was intended to preserve the law as declared by the Montana Supreme Court, and therefore the statute provides that a person, to be convicted of burglary, must either have entered or remained unlawfully in the burglarized premises. The basic burglary statute, punishable by up to 10 years in prison, provides that burglary is knowingly entering or remaining unlawfully in an occupied structure with the purpose to commit an offense therein. Subsection (2) of that statute provides an increased penalty of up to 40 years in prison for aggravated burglary; knowingly entering or remaining in an occupied structure if the offender's purpose is to commit a felony

and certain aggravating circumstances, such as the use of weapons or explosives or the infliction of bodily injury on anyone are present.

Through inadvertence the word "unlawfully" was left out in this section in defining the aggravated crime. It was the intention of the Criminal Law Commission that aggravated burglary should be the crime of burglary made more serious by the aggravating circumstances. It was not the intention that a lawful entry might be punished by 40 years in prison, while an unlawful entry would be punishable by only 10.

The present phrasing of Section 94-6-204 (2) raises two undesirable possibilities; first, a person might receive greater punishment for a lawful entry than an unlawful one; second, the aggravated burglary statute might be held to be unconstitutional because of the length of punishment assessed in comparison to burglary or the indefinite manner in which the crime is defined

aggravated burglary statute might be held to be unconstitutional because of the length of punishment assessed in comparison to burglary or the indefinite manner in which the crime is defined (if it were construed to be criminal punishment of a lawful act).

The proposed amendment will carry out the original intent of the draftsmen and the Legislative Assembly and remove the possibl legal and constitutional objections.

SENATE BILL NO. 120

INTRODUCED BY ROBERTS, CETRONE

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-End-

REFERENCE BILL